

### **Hakim Shaheed: 2 Months Tuhar**

If a woman's habit of tuhar exceeds **6 months (180 days)** and then she bleeds continuously the **fatwa** is upon Hakim Shaheed's opinion. So in the continuous bleeding she will count only 2 months (60 days) as her tuhar.

Example 1:

A woman has a habit of 7 days haidh and 8 months (240 days) tuhar. While she is only bleeding for 7 days and remains clean in reality for 8 months then that is what she will follow.

However, if she starts to bleed continuously her tuhar will come down to 2 months NOT her usual habit of 8 months. Yes, her haidh will remain at her habit, in this case 7 days.

Example 2:

If a woman has a habit of 8 days haidh and 5.5 months (165 days) tuhar and then she bleeds continuously her haidh will remain at 8 days and her tuhar 5.5 months (165 days), since the tuhar was less than 6 months (180 days).

### **Case Study:**

1. A woman has a habit of 4 days haidh and 9 months tuhar. Then she bled continuously. What will her habit of tuhar and haidh be in the continuous bleeding?
2. A woman has a habit of 10 days haidh and 7 months tuhar. She did not bleed continuously. How much will her habit be?
3. A woman has a habit of 9 days haidh and 157 days tuhar. Then she bleeds continuously. What will her habit of tuhar and haidh be in the continuous bleeding?
4. A woman has a habit of 6 days haidh and 1 year tuhar. Then she bled continuously. What will her habit of tuhar and haidh be in the continuous bleeding?

Below is for those enthusiastic students ... :)

### Reason why Hakim Shaheed's opinion was taken:

1. The opinion of Hakim Shaheed is narrated from Imam Muhammad by his student Ibn Samaa'ah as Sarakhsi points out in his المحيط.

2. Stronger words of preference:

- The words of preference used for Maidani's opinion were:

- i. عليه الاكثر (most are upon this opinion)
- ii. هو المختار (it is the chosen one)
- iii. عليه الاعتماد (it is the relied upon opinion)

- The words of preference used for Hakim Shaheed's opinion were:

- i. هو الاصح (it is the most correct)
- ii. الفتوى عليه (the fatwa is upon this opinion)
- iii. به يفتى (fatwa is given on this opinion)

❖ Allamah Shami states that: The word فتوى is the strongest word of preference.

3. Evidence from analogy:

- Maidani's analogy:

The shortest possible tuhar between any two lochia (nifaas) is 6 full months. So the longest period of tuhar between any two menstrual periods (haidh) should be shorter, since haidh comes more often than nifaas. Therefore he cuts it by 1 hour shorter i.e. 6 months but an hour.

- Hakim Shaheed's analogy:

The word العادة (habit) is taken from the word المعاودة (reoccurrence). Haidh and tuhar usually reoccurs in two months, since women see their periods once a month normally. So when she is clean for two months she is actually clean in the days of her habit. And a habit changes when it occurs twice (according to Imam Muhammad). So since she remained clean hukman for 2 months we will count the 2 months as her new habit of tuhar.

❖ The author of الغاية said that Maidani's evidence is stronger.

Out of 3 reasons of preference Hakim Shaheed takes 2. Let us analyze these reasons of preference from an *usulul iftaa* point of view.

1. When there is one opinion of the founder or one of the founding fathers of the mathab, and there are no contradicting opinion from any other founding father, then his opinion will be taken.

Here we only have an opinion of Imam Muhammad in this issue. There are no known narrations of Imam Abu Hanifah, Imam Abu Yusuf, Zufar or Hasan ibn Ziyaad.

So we will take Muhammad's opinion.

2. As mentioned by Ibn Abedeen Shaami, the word الفتوى is the strongest word for showing precedence.
3. According to the author of الغاية Maidani's analogical evidence is stronger. However the *usulul iftaa* state that, the Imam's ijtihaad is always stronger than the ones that come after (unless it is clear that there was a hadith that he did not know, which contradicts his stance. This is also for the mujtahedeen to decide, not us).

#### Objection:

We do not take Imam Muhammad's opinion concerning the changing of habit. He says that for a habit to change, the new one must come at least twice. Rather we take Imam Abu Yusuf's opinion on the issue of "habit changing". He says a habit will change by a new valid blood and/or a new valid tuhar. One is sufficient. The question is, why do we take "2 months tuhar" when its analogy was based on Muhammad's view of "habit changing"?

#### Answer:

For the "2 months tuhar" issue only Imam Muhammad's opinion was available from amongst the founding fathers of the mathab. So we followed the *usulul iftaa* and took it. The analogical evidence mentioned was by later scholars. It does not necessarily have to be the exact evidence Imam Muhammad used.

As oppose to the issue of "habit changing" where we have more than one opinion of the founding fathers. Imam Muhammad's view is a new habit must be seen at least twice to change a previous one. While Imam Abu Yusuf states,

once is enough. Imam Abu Hanifah has two opinion on the issue. First with Muhammad but the last (or the opinion he retracted to) with Abu Yusuf.

- The *usulul iftaa* states that if there is an opinion of Abu Hanifah then that is preferred over all. If he has two opinions, then his final stance is given priority.
- The words *عليه الفتوى* & *به يفتى* were used for Imam Abu Yusuf's opinion in *المحيط*.

Therefore Imam Abu Yusuf's opinion which is Imam Abu Hanifah's final opinion will be preferred.

And Allah knows best.

(References: Enayah, Fathul Qadeer, Durr Mukhtaar, Raddul Muhtaar, Manhal Waredeen, Usul Iftaa)